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(Original Signature of Member)

112TH CONGRESS
2D SESSION

H. R. _____

To amend the Internal Revenue Code of 1986 and the Social Security Act
to provide for employment tax treatment of professional service businesses.

IN THE HOUSE OF REPRESENTATIVES

Mr. STARK introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend the Internal Revenue Code of 1986 and the Social
Security Act to provide for employment tax treatment
of professional service businesses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Narrowing Exceptions
5 for Withholding Taxes Act of 2012”.

1 **SEC. 2. EMPLOYMENT TAX TREATMENT OF PROFESSIONAL**
2 **SERVICE BUSINESSES.**

3 (a) IN GENERAL.—Section 1402 of the Internal Rev-
4 enue Code of 1986 is amended by adding at the end the
5 following new subsection:

6 “(m) SPECIAL RULES FOR PROFESSIONAL SERVICE
7 BUSINESSES.—

8 “(1) SHAREHOLDERS PROVIDING SERVICES TO
9 DISQUALIFIED S CORPORATIONS.—

10 “(A) IN GENERAL.—In the case of any dis-
11 qualified S corporation, each shareholder of
12 such disqualified S corporation who provides
13 substantial services with respect to the profes-
14 sional service business referred to in subpara-
15 graph (C) shall take into account such share-
16 holder’s pro rata share of all items of income or
17 loss described in section 1366 which are attrib-
18 utable to such business in determining the
19 shareholder’s net earnings from self-employ-
20 ment.

21 “(B) TREATMENT OF FAMILY MEMBERS.—
22 Except as otherwise provided by the Secretary,
23 the shareholder’s pro rata share of items re-
24 ferred to in subparagraph (A) shall be increased
25 by the pro rata share of such items of each
26 member of such shareholder’s family (within

1 the meaning of section 318(a)(1)) who does not
2 provide substantial services with respect to such
3 professional service business.

4 “(C) DISQUALIFIED S CORPORATION.—For
5 purposes of this subsection, the term ‘disquali-
6 fied S corporation’ means—

7 “(i) any S corporation which is a
8 partner in a partnership which is engaged
9 in a professional service business if sub-
10 stantially all of the activities of such S cor-
11 poration are performed in connection with
12 such partnership, and

13 “(ii) any other S corporation which is
14 engaged in a professional service business
15 if the principal asset of such business is
16 the reputation and skill of 3 or fewer em-
17 ployees.

18 “(2) PARTNERS.—In the case of any partner-
19 ship which is engaged in a professional service busi-
20 ness, subsection (a)(13) shall not apply to any part-
21 ner who provides substantial services with respect to
22 such professional service business.

23 “(3) PROFESSIONAL SERVICE BUSINESS.—For
24 purposes of this subsection, the term ‘professional
25 service business’ means any trade or business if sub-

1 stantially all of the activities of such trade or busi-
2 ness involve providing services in the fields of health,
3 law, lobbying, engineering, architecture, accounting,
4 actuarial science, performing arts, consulting, ath-
5 letics, investment advice or management, or broker-
6 age services.

7 “(4) REGULATIONS.—The Secretary shall pre-
8 scribe such regulations as may be necessary or ap-
9 propriate to carry out the purposes of this sub-
10 section, including regulations which prevent the
11 avoidance of the purposes of this subsection through
12 tiered entities or otherwise.

13 “(5) CROSS REFERENCE.—For employment tax
14 treatment of wages paid to shareholders of S cor-
15 porations, see subtitle C.”.

16 (b) CONFORMING AMENDMENT.—Section 211 of the
17 Social Security Act is amended by adding at the end the
18 following new subsection:

19 “(1) SPECIAL RULES FOR PROFESSIONAL SERVICE
20 BUSINESSES.—

21 “(1) SHAREHOLDERS PROVIDING SERVICES TO
22 DISQUALIFIED S CORPORATIONS.—

23 “(A) IN GENERAL.—In the case of any dis-
24 qualified S corporation, each shareholder of
25 such disqualified S corporation who provides

1 substantial services with respect to the profes-
2 sional service business referred to in subpara-
3 graph (C) shall take into account such share-
4 holder's pro rata share of all items of income or
5 loss described in section 1366 of the Internal
6 Revenue Code of 1986 which are attributable to
7 such business in determining the shareholder's
8 net earnings from self-employment.

9 “(B) TREATMENT OF FAMILY MEMBERS.—
10 Except as otherwise provided by the Secretary
11 of the Treasury, the shareholder's pro rata
12 share of items referred to in subparagraph (A)
13 shall be increased by the pro rata share of such
14 items of each member of such shareholder's
15 family (within the meaning of section 318(a)(1)
16 of the Internal Revenue Code of 1986) who
17 does not provide substantial services with re-
18 spect to such professional service business.

19 “(C) DISQUALIFIED S CORPORATION.—For
20 purposes of this subsection, the term ‘disquali-
21 fied S corporation’ means—

22 “(i) any S corporation which is a
23 partner in a partnership which is engaged
24 in a professional service business if sub-
25 stantially all of the activities of such S cor-

1 poration are performed in connection with
2 such partnership, and

3 “(ii) any other S corporation which is
4 engaged in a professional service business
5 if the principal asset of such business is
6 the reputation and skill of 3 or fewer em-
7 ployees.

8 “(2) PARTNERS.—In the case of any partner-
9 ship which is engaged in a professional service busi-
10 ness, subsection (a)(12) shall not apply to any part-
11 ner who provides substantial services with respect to
12 such professional service business.

13 “(3) PROFESSIONAL SERVICE BUSINESS.—For
14 purposes of this subsection, the term ‘professional
15 service business’ means any trade or business if sub-
16 stantially all of the activities of such trade or busi-
17 ness involve providing services in the fields of health,
18 law, lobbying, engineering, architecture, accounting,
19 actuarial science, performing arts, consulting, ath-
20 letics, investment advice or management, or broker-
21 age services.”.

22 “(c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2011.